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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	

AT&T OPPOSITION TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION

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SUMMARY

As the petitions for reconsideration demonstrate, many of the regulations established in the *CPNI Order* are unnecessary to protect consumers' privacy interests, go beyond any plausible statutory requirement and, ironically, would undermine the procompetitive goals of the 1996 Telecommunications Act by denying to carriers and their customers the ability to consider attractive new offers based on CPNI. Others are intrusive and impose exorbitant, unwarranted costs on carriers without any privacy-enhancing benefit to consumers. As discussed below, these aspects should be promptly reconsidered.

At the same time, the Commission should reject the BOCs' and other ILECs' pleas for additional flexibility to market CPE and information services based on use of local monopoly CPNI. It should, moreover, enforce the directives of Section 272 to ensure that BOCs cannot discriminate against their rivals in sharing CPNI information. These same nondiscrimination duties should be applied to all ILECs under other sections of the 1996 Act.

In Part I, AT&T shows that the petitions unanimously confirm that the Commission's restriction on use of CPNI for winback marketing is anticompetitive and deprives consumers of the essential benefits of competition: obtaining the least costly and most useful service from a carrier. This rule is not supported by the statutory language and would, as BellSouth points out, "deprive

American consumers of the benefits of head-to-head competition." The parties overwhelmingly support the need for prompt action to avoid this anticompetitive effect.

In Part II, AT&T demonstrates that the petitions also confirm that the Commission should lift the prohibition on use of wireless CPNI for marketing of mobile handsets and related information services. This unnatural demarcation will frustrate consumers' expectations as to integrated marketing, undermine access to improved wireless services, and impair efficient use of spectrum. Section 222 does not compel this anti-consumer result. Given the characteristics of mobile handsets and voice mail used with wireless service, these components are clearly "part of the service or used in or necessary to" the provision of the service within the meaning of Section 222(c)(1).

In Part III, AT&T shows that the BOCs and other ILECs should not be permitted to use local landline CPNI, absent customer approval, for the marketing of CPE and information services. Unlike in the wireless context, the local market remains a fortress of ILEC domination and this flexibility would allow ILECs to leverage their local monopoly into these competitive markets. At the same time, AT&T agrees with CompTel and others that lifting the restriction on use of CPNI for competitive carriers would permit consumers to realize significant benefits and increased choice and convenience. At a minimum, the Commission should allow competitive carriers to use CPNI for

marketing CPE and information services that are *closely related* to the underlying telecommunications service (such as customized billing, enhanced announcements, and network diagnostic software) which are features "used in" the provision of service.

In Part IV, AT&T shows that there is broad consensus that the electronic audit trail requirement would impose extraordinary costs on carriers without any cognizable consumer benefit. In all events, the Commission's objectives could be far better achieved by other less costly and regulatory means, including training and supervisory review. The petitions also confirm that the first screen "flag" requirement poses a serious problem for many carriers. Thus, the Commission should require carriers to develop processes to implement tracking of CPNI approvals rather than invariably imposing a first screen requirement, which may not always be practicable due to systems limitations. Although the electronic audit trail requirement is clearly inappropriate and existing safeguards are sufficient, if the Commission believes that some sort of additional compliance mechanism is necessary, it could require carriers to conduct CPNI audits. If any form of electronic compliance is required, as the petitions demonstrate, the 8 month compliance window needs to be extended.

In Part V, AT&T shows that the Commission should reconsider the *CPNI Order* to impose adequate competitive

safeguards on BOC and other ILEC use of CPNI. Because of their bottleneck, the BOCs and other ILECs have unparalleled knowledge of CPNI and the Commission clearly recognizes that combined service CPNI is a powerful marketing asset which an ILEC could use anticompetitively. The Commission's "total service" approach to use of CPNI bestows unwarranted advantages on incumbent LECs that permits them to exploit their monopoly information.

This special advantage on BOC use of local CPNI for marketing of long distance contravenes Section 272's nondiscrimination safeguards that are designed to ensure that the Section 272 affiliate does not gain unfair marketplace advantages over competitors. Failure to correct this untenable result will make the *CPNI Order* irreconcilable with the plain requirements of Section 272 of the Act, and require appropriate intervention by a reviewing court either in this matter or in the context of a Section 271 application. To address these competitive concerns, AT&T agrees with a number of parties that explicit nondiscrimination obligations, such as those that Section 272 requires be imposed on the BOCs, should apply to all ILECs' use of local CPNI under Sections 201(b) and 202(a) of the Act.

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Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, and its Public Notice, Report No. 2280, published in 63 Fed. Reg. 31775 (June 10, 1998), AT&T Corp. ("AT&T") submits this opposition to and comments on petitions for reconsideration of the Commission's February 26, 1998 Second Report and Order, governing carriers' use of Customer Proprietary Network Information ("CPNI").[1] As the petitions confirm, many of the regulations established in the *CPNI Order* are unnecessary to protect consumers' privacy interests, go beyond any plausible statutory requirement and,

[1] Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998 ("*CPNI Order*" and "*Further Notice*," respectively), published in 63 Fed. Reg. 20326 (April 24, 1998).

ironically, would undermine the procompetitive goals of the 1996 Telecommunications Act by denying to carriers the right to use CPNI for making competitive offers.[2] Other requirements adopted by the Commission impose exorbitant and unwarranted costs on carriers yet provide no offsetting privacy-enhancing benefit to consumers. All these aspects of the Commission's ruling, namely, those which deny carriers the right to CPNI for winback purposes, prohibit use of CPNI by competitive carriers for marketing of related customer premises equipment ("CPE") and information services, require carriers to maintain elaborate electronic audit trails, and impose rigid first screen requirements, should be promptly reconsidered.

At the same time, the Commission should reject the Bell Operating Companies' ("BOCs") pleas for additional flexibility to market CPE and information services based on the use of their local monopoly CPNI, which would permit them to leverage their monopoly into these competitive markets. Moreover, the Commission should reconsider the "total service" approach and enforce Section 272 with respect to BOC use of CPNI to ensure that the BOCs cannot discriminate against their rivals in the sharing of CPNI and other non-CPNI information with their affiliates. These same nondiscrimination duties should be applied to all incumbent local exchange carriers ("ILECs") under other sections of the Act.

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[2] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 151, et seq. ("1996 Act").

I. THE PROHIBITION ON USE OF CPNI FOR WINBACK, ABSENT CUSTOMER APPROVAL, IS ANTICOMPETITIVE AND SHOULD BE RESCINDED.

As the petitions unanimously confirm, the Commission's prohibition on use of CPNI, absent customer approval, for marketing purposes once the customer has switched its services to another carrier, should be rescinded.[3] *CPNI Order*, para. 85; Section 64.2005(b)(3). Indeed, as GTE (at 35) points out, the prohibition on use of CPNI for winback marketing is anticompetitive and deprives consumers of the essential benefits of competition: obtaining the least costly and most useful service from a carrier.

There is no question that the ban on use of CPNI for winback purposes "will unnecessarily hamper a well-established competitive practice that substantially benefits consumers." 360 Communications at 10. A customer changing carriers is indicative of a customer looking for a better deal. BellSouth at 17. Winback provides a form of direct comparison shopping for consumers who are interested in assessing their options. Frontier at 8. Thus, "[i]f the first carrier is prohibited from making . . . an offering through the use of CPNI, it is the customer that may lose out on the better deal." PageNet at 4. Without question, the winback prohibition perversely and

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[3] AT&T at 2-5; 360 Communications at 10-11; ALLTEL at 7; Bell Atlantic at 17; BellSouth at 16; Comcast at 16; CTIA at 32; Frontier at 8-10; GTE at 32-35; MCI at 51; Omnipoint at 18; PageNet at 2, 4; PCIA at 1; PrimeCo at 9; SBC at 8-9; USTA at 7.

improperly "deprive[s] American consumers of the benefits of actual head-to-head competition." BellSouth at 16; Comcast at 16. Nothing could be *less* in the consumer's interest. ALLTEL at 7 (emphasis added). In short, the winback prohibition will stifle competition to the detriment of consumers. PrimeCo at 9.

There is no reason for the Commission to have crafted the anti-winback rule. As several parties point out, there is no statutory prohibition on the use of CPNI to win back a customer with whom the carrier had a service relationship.[4] Rather, winback is clearly encompassed in the notion of *initiating*, *providing* and *rendering* service, as expressly permitted by Sections 222(c)(1) and 222(d)(1) of the Act. AT&T at 3; CTIA at 32; PCIA at 1.

Although the Commission's rules permit a carrier to use CPNI to win back a former customer who had given approval for use of CPNI (Section 64.2005(b)(3)), the Commission apparently believes that the implied consent to use CPNI for marketing purposes is somehow revoked when a customer elects service from another carrier. This assumption is clearly incorrect. As the petitions demonstrate, a proper reading of the Act would allow carriers to access a former customer's information to regain the customer's business. Certainly, there is no privacy interest at issue here: the customer previously had a relationship with the carrier and the carrier thus had the right to use the customer's

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[4] AT&T at 2; 360 Communications at 11; PageNet at 2.

telecommunications usage information. There is no reason to believe that the customer would expect this to change. To the contrary, customers *expect* their previous carriers to seek to regain their business with even better tailored and more attractive offers, as any other business would do. SBC at 8-9.

Moreover, apart from its entirely anti-consumer effects, as several parties show, the rule prohibiting use of CPNI for winback is also procedurally flawed in that the Commission never provided parties with notice that it was contemplating such a restriction.[5] In short, given that the ban on use of CPNI for winback marketing creates inefficiencies, denies consumers the essential benefits of competition and choice, and is inconsistent with the Act (which clearly allows such use), the Commission should promptly rescind the winback prohibition. Omnipoint at 18.

II. THE PROHIBITION ON THE USE OF WIRELESS CPNI FOR MARKETING OF MOBILE HANDSETS AND RELATED INFORMATION SERVICES SHOULD BE LIFTED.

Every wireless service provider that petitioned for reconsideration of the *CPNI Order* objects to the Commission's decision to restrict the use of CPNI for integrated marketing of wireless telecommunications services, information services, and equipment.[6] These parties show that the Commission's decision to

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[5] CTIA at 32-33; PageNet at 2; USTA at 6; Vanguard at 14.

[6] AT&T at 5-8; CTIA at 1-7; PCIA at 3; Comcast at 14; CommNet at 2; MetroCall at 6; RAM at 6; Omnipoint at 4-13; PageNet at 4; PrimeCo at 2; 360 Communications at 4-9; Vanguard

(footnote continued on following page)

distinguish between CPE, information services, and wireless services does not comport with real world customer expectations, which are the purported basis for the "total service" approach.[7] This unnatural demarcation will undermine carriers' ability to differentiate their offerings, frustrate customer access to improved wireless services, and impair efficient use of radio spectrum, all of which run counter to long-term Commission objectives. CTIA at 9. Moreover, as petitioners demonstrate, Section 222 does not compel this anticompetitive and anti-consumer result.[8]

A wireless carrier should be permitted to use wireless CPNI to market the appropriate mobile handset to a customer because providing the handset is "necessary to, or used in, the provision of such telecommunications service," under Section 222(c)(1)(B). As several parties confirm, certain wireless equipment is *integral* to the provision of wireless service. AT&T at 6-7; Bell Atlantic at 6; BellSouth at 10-11; PageNet at 5; Vanguard at 9. For example, to obtain digital service from a particular carrier, the customer not only needs a digital (rather than analog) handset, but also must have the correct type of

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(footnote continued from previous page)

at 9-12; NTCA at 4; Bell Atlantic at 20-22; BellSouth at 11-16; GTE at 10-12; SBC at 3; Frontier at 10-11.

[7] See, e.g., 360 Communications at 7; Comcast at 9, 12; PrimeCo at 3, 7; GTE at 10-12; SBC at 3; Frontier at 10-11.

[8] See, e.g., Omnipoint at 4-5; PrimeCo at 4.

digital handset because different digital technologies have been adopted by different cellular carriers. The carrier must then activate the handset and program it with unique identification and security codes. Additionally, the mobile handset itself is licensed by the FCC under Title III as part of the facilities used to furnish commercial mobile radio services ("CMRS"). Accordingly, a mobile handset is, in effect, a part of the service from which the CPNI is derived or is "necessary to or used in" the provision of telecommunications service within the meaning of Section 222(c)(1). *CPNI Order*, para. 79; AT&T at 7; PCIA at 8; PrimeCo at 4-5; CommNet at 3.

Similarly, a wireless customer should be able to market information services to a customer. As PrimeCo shows (at 6-7), voice mail enables a wireless customer to continue to receive phone calls when the customer has turned off the mobile handset to preserve battery life or avoid interruptions while driving. In this manner voice mail or short messaging service is "used in" the provision of wireless service. Moreover, in order to market digital cellular service, carriers need to be able to explain to the customer what differentiates digital cellular service from analog, including the information services that are offered as part of digital service.

One-stop shopping for all wireless telecommunications, CPE, and enhanced services is the well-established marketing practice and *modus operandi* of the entire industry. PCIA at 4. Requiring additional consent "under these circumstances would deprive consumers of a convenient form of sales and service to

which they have become accustomed." PCIA at 9. In recognition of this fact, the Common Carrier Bureau recently clarified that, to the extent that a wireless carrier has already provided the customer with both a mobile handset or information service and wireless service, then both the handset or information service and the wireless service should be viewed as part of the "total service" that the carrier provides, and alternative improved versions of each may be marketed to the customer using wireless CPNI without customer approval.[9]

However, as several parties demonstrate, allowing use of wireless CPNI to market mobile handsets or information services only if the customer has previously obtained and continues to purchase these components as part of a "service bundle" is insufficient. AT&T at 7-8; ALLTEL at 6; Bell Atlantic at 21; PageNet at 6; RAM at 5; Vanguard 12; BellSouth at 15. BellSouth (at 15) correctly explains that "[i]n the CMRS world, where customer churn runs about 30% annually, carriers are frequently providing service to customers to whom they did not originally sell the CPE." As a result, the carrier could not use CPNI to market a bundled digital service and equipment package to such customers. Likewise, the Commission's current rules make it costly and cumbersome for a carrier to use CPNI to advise its customers about new information services, including the new

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[9] Order, CC Docket No. 96-115, DA 98-971, released May 21, 1998, paras. 6-7 ("*Clarification Order*"). See *CPNI Order*, paras. 21-35, 51, 53-58, 63-66.

features made possible by digital technology, unless the wireless customer already subscribed to an information service provided on the analog network.

Section 222 does not compel these arbitrary results. As many petitioners note, the Commission adopted an overly literal interpretation of Section 222 to exclude wireless CPE and information services from the definition of wireless service for CPNI purposes; by contrast, it adopted a more flexible interpretation for inside wiring.[10] The Bureau's narrow "clarification," predicated on prior purchase of these components as part of a bundle, fails to acknowledge that a mobile handset or information service is likewise "necessary to or used in" the wireless service. Thus, a wireless carrier should be permitted to use wireless CPNI to market mobile handsets and related information services under Section 222(c)(1), *irrespective* of whether or how it has previously supplied the customer with these components.[11]

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[10] See CTIA at 25-29; Comcast at 13-14, CommNet at 2.

[11] To the extent that prior provision of a mobile handset or wireless information service remains relevant (which it should *not*), then as BellSouth (at 4) points out, it should not matter whether these components were purchased from the carrier separately, or as part of a bundle.

III. THE PROHIBITION ON THE USE OF LANDLINE CPNI FOR MARKETING OF RELATED CPE AND INFORMATION SERVICES SHOULD BE LIFTED FOR COMPETITIVE CARRIERS ONLY.

The BOCs and other ILECs also assert that the Commission should broadly allow the use of landline CPNI for marketing of CPE and information services. Ameritech at 3-4; Bell Atlantic at 7-9; BellSouth at 5, 7, 9-10; GTE at 15-16; SBC at 7. For example, BellSouth (at 5) proclaims that the rule banning the use of CPNI to market CPE and information services "inappropriately trivialize[s] the inherent and integral relationship, both from an operational standpoint and from customers' perspectives, between telecommunication 'service' and ancillary features and equipment that are necessary to make the service work or work better."

Although AT&T does not disagree that there is a relationship, between CPE and certain information services respectively, and the underlying basic service, to guard against inappropriate leveraging of their local monopoly CPNI, the BOCs and other ILECs should not be permitted to use local landline CPNI, absent customer approval, for the marketing of CPE and information services at this time. Unlike in the wireless context, the market for local services remains essentially a fortress of ILEC domination and, thus, permitting these carriers to use their local CPNI for this purpose would enable the ILECs, particularly the largest incumbents, to leverage their local

market power into the competitive CPE and information services markets.[12] *CPNI Order*, para. 37, n.154.

By contrast, as CompTel (at 15-18) and LCI (at 8-9) point out, the prohibition on the use of CPNI for marketing CPE and information services is a step backwards for competitive carriers and deprives consumers of seamless telecommunications offerings. By definition, competitive carriers could not leverage market power into nonregulated markets. Consumers would realize significant benefits, including increased choice and convenience, if the Commission allowed competitive carriers to count within the "total service relationship" CPE and information services that are related to the underlying telecommunications service to which a customer subscribes. CompTel at 16. Like inside wire, CPE and information services are *optional* aspects of the customer's total service relationship in a situation in which the CPNI is itself derived from a competitive service, such as long distance. Accordingly, competitive carriers should be allowed to use CPNI to market CPE and information services. The Commission could grant the relief requested by construing Section 222(c)(1) to permit competitive carriers to use CPNI to market CPE and information services (and yet maintain constraints on

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[12] For this reason, and contrary to Ameritech's request (at 8), use of local CPNI to make offers that include out-of-category elements (such as voice mail and paging) should not be permitted.

ILECs given their local monopoly power) or by forbearing from Section 222(c)(1)'s requirements for competitive carriers only.[13]

In all events, even if the Commission were not inclined to grant relief to competitive carriers to use CPNI for the marketing of CPE and information services generally, it should, at a minimum, allow competitive carriers to use CPNI for such offerings that are *closely related* to the underlying telecommunications service. These additional features include such add-ons as customized billing arrangements, enhanced announcements on toll-free calls, voice mail for virtual private network customers, and software that permits customers to track, manage and perform simple diagnostics and maintenance on their telecommunications services. The Commission should encourage carriers to continue to bring new features to their consumers' attention, by recognizing that such features -- so long as they are enhancements to basic service functionality -- are "used in" the provision of telecommunications service.

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[13] Section 10(a) of the Communications Act, as amended, 47 U.S.C. § 160, requires the Commission to forbear from applying any regulation, if: (1) enforcement is not necessary to ensure that charges or practices are just and reasonable and not unjustly discriminatory; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest. These criteria are clearly met. Competitive carriers do not have the ability to use their telecommunications services to underwrite the costs of CPE or information services; consumer privacy is not implicated; and forbearance furthers the ability of carriers with CPNI derived from competitive services to better meet customers' needs.

IV. THE ELECTRONIC AUDIT TRAIL REQUIREMENT SHOULD BE ELIMINATED BECAUSE IT IMPOSES ENORMOUS COSTS ON CARRIERS WITHOUT ANY OFFSETTING CONSUMER BENEFIT, AND CARRIERS SHOULD BE PERMITTED FLEXIBILITY TO DEVELOP CPNI CONSENT TRACKING OTHER THAN THE FIRST SCREEN REQUIREMENT.

A. Electronic Audit Trail

There is broad consensus among petitioners that the *CPNI Order*'s requirement that carriers maintain an electronic audit mechanism that tracks access and records whenever customer records are opened, by whom, and for what purpose "impose[s] inordinate burdens on carriers at extremely high cost and produces no cognizable benefit."[14] *CPNI Order*, para. 199; Section 64.2009(c). The petitions amply demonstrate that the Commission has erroneously concluded that an electronic audit trail requirement will not be burdensome because carriers already maintain capabilities to track access for a variety of purposes. Indeed, the costs of developing and implementing an electronic audit trail system appear to be much greater than the $100 million costs of developing and implementing an access restriction safeguard that the Commission found to be excessive and unjustifiable. *CPNI Order*, para. 197 & n.687.

As MCI points out (at 37-38), multiple databases, perhaps thousands, would be affected by a complete customer data audit trail requirement; would involve millions of records each day; and could cost over $1 billion per year to maintain,

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[14] BellSouth at 19; see also AT&T at 8-13; Ameritech at 9; Bell Atlantic at 22; MCI at 36; CompTel at 23-24; Frontier at 4.

exclusive of the system upgrade cost to increase underlying computer power. Although the estimated compliance costs cited by carriers vary considerably, the one thing that is overwhelmingly and singularly clear is that an electronic audit trail will impose billions of dollars on the telecommunications industry without perceptible consumer benefit.[15] Equally compelling, and as the petitions also show, developing an electronic audit mechanism involves the same resources that are currently being employed for the *Year 2000* effort and implicates the same sets of computer systems.[16] Thus, embarking on the FCC's electronic audit requirement potentially jeopardizes a critical, national initiative.

Apart from the exorbitant costs and incomprehensible diversion of resources, as BellSouth notes (at 19), there is "no tangible showing in this proceeding that unnecessarily complex and expensive electronic audit trail mechanisms are all of a sudden needed to ensure . . . carriers behave responsibly" with respect to the use of CPNI. *See also* CompTel at 23-24 (no record on costs and benefits of flags or audit trails). As Independent Alliance (at 3) points out, "flags" and "tags" are not required by Congress, nor have they been shown to be necessary to protect consumer privacy. In these circumstances, any sort of regulatory

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[15] Ameritech at 9; AT&T at 11; BellSouth at 19, 21; MCI at 36; Omnipoint at 13; Sprint at 4.

[16] AT&T at 9; Bell Atlantic at 22; MCI at 38; Omnipoint at 15; GTE at 42; Independent Alliance at 8.

micromanagement of carrier computer systems is entirely unwarranted. LCI at 2. Having crafted substantive use restrictions, the specific system compliance requirements should be left to carriers rather than the rigid, one-size fits all requirement which the *CPNI Order* imposes. Bell Atlantic at 22; LCI at 6.

Moreover, such vast volumes of CPNI access information would be tracked and maintained that the output of the electronic audit trail would likely not be readily useable for any specific customer. Not only could this volume of data easily overwhelm available technology, but, as MCI (at 38) notes, any mammoth data tracking requirement would inevitably slow data retrieval time to a crawl. Even if carriers were capable of storing and querying such a large volume of data, none of this information is ever likely to be helpful to the customer. Instead, it would be extremely expensive to develop and run, with no offsetting privacy-enhancing benefit. Further, as several parties confirm, development could be expected to take 2-4 years and could not be accomplished within the 8 months provided by the Commission. *See, e.g.*, AT&T at 13; MCI at 36; LCI at 6.

To ameliorate these effects, a few parties suggest that the electronic audit trail requirement should be applied only to final customer account systems accesses for marketing, sales and customer care (account inquiry). Ameritech at 9; GTE at 42; Independent Alliance at 8; MCI at 40-41 (and limited to date, time, user group and purpose). AT&T estimates that creating an electronic audit system, even on this more limited scale, would

require one-time outlays exceeding $126 million and ongoing annual charges of approximately the same amount. Expenditures at these levels simply cannot be justified. As Sprint (at 5) shows, the "public interest in ensuring that customers receive efficient service at reasonable rates requires that the Commission consider other less expensive but comparably effective solutions to problems before saddling the industry with an approach that involves significant costs that will have to be recovered from the carriers' customers." AT&T strongly believes that the alternative safeguards already imposed by the Commission make any sort of mandatory electronic audit trail unnecessary. In short, the electronic audit trail requirement should be eliminated altogether, particularly given the sufficiency of other safeguards including training, supervisory review of outbound marketing campaigns, carrier-imposed access limitations, and disciplinary procedures, and corporate officer certification. AT&T at 15-17.

In all events, if the Commission believes that some sort of compliance mechanism beyond those identified above is needed, then instead of an electronic audit trail, the Commission could require carriers to develop an audit program to ensure that systems are compliant on a sample or functional basis, as AT&T (at 17) suggests. An actual audit of employees, with emphasis on marketing, sales and customer care employees who have frequent access to CPNI, is much more probative in that such an audit would show whether implemented training programs have been effective. Unlike the electronic audit trail, the resulting

audit reports would not compile volumes of useless access data, but would provide specific feedback not only on compliance with the CPNI rules but also possible areas of training program improvement.

B. First Screen

The Commission's new CPNI rules also dictate that CPNI approval flags be conspicuously displayed within a box or comment field or within the first few lines of the computer screen, along with the customer's existing service subscription. *CPNI Order*, para. 198, Section 64.2009(a). The petitions confirm that this requirement poses a serious problem for many carriers.[17] Thus, the Commission should allow carriers flexibility to use alternative CPNI consent status tracking mechanisms where establishing the first screen requirement is not practicable, if the carrier intends to use CPNI for marketing outside the customer's service subscription category. To the extent that a CPNI database is not used for out-of-category marketing, the Commission should clarify that the first screen requirement does not apply. AT&T at 13.[18]

As 360 Communications (at 12) shows, the first screen requirement is "severely burdensome and completely unnecessary" as many databases allow entry at other than the first screen.

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[17] See, e.g., AT&T at 14; CompTel at 23-24; Independent Alliance at 3.

[18] See *CPNI Order*, para. 194 and n.681.

Thus, contrary to the Commission's expectations, a flag on the first screen will not necessarily alert the database user to the customer's CPNI status. And, as AT&T explained (at 14), the first screen requirement poses a serious problem for its business markets division, which has in excess of 100 systems accessed by employees in various aspects of sales, marketing and customer care. Rather than expending $75 million dollars for a first screen flag for these systems, AT&T suggests (at 14-15) that an appropriate and more cost-effective alternative to the first screen requirement is a centralized customer consent database. With proper training, sales, marketing and customer care employees can be instructed to access the customer consent database in those situations where out-of-category sales activity is contemplated. Indeed, such a centralized customer consent database makes sense because many business sales are handled by individual customer account representatives, who are familiar with the customer's telecommunications requirements, and do not rely on an isolated computer screen-based contact for marketing.

A number of parties confirm, moreover, that 8 months is insufficient time to comply with the first screen requirement.[19] Thus, in addition to recasting the rules to allow carriers some implementation flexibility where required, the Commission should extend the compliance time frame for tracking of customer consents to 24 months, as Sprint (at 2-3) suggests.

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[19] ALLTEL at 5, 8; Independent Alliance at 8; LCI at 6; Sprint at 2, 3; Vanguard at 8.

V. THE COMMISSION SHOULD APPROPRIATELY CONSTRAIN BOC AND OTHER ILECS' USE OF LOCAL CPNI TO GUARD AGAINST DISCRIMINATORY, ANTICOMPETITIVE USE.

The Commission concluded in the *CPNI Order* that Section 222 governs all carriers' use of CPNI and overruled its prior determination that a Bell Operating Company ("BOC") may not discriminate between its affiliate and a third party in the use of information. *CPNI Order*, para. 154. The Commission found that Section 222 sufficiently protects against competitive concerns as to a BOC's sharing of CPNI with its statutory affiliates. *Id.*, paras. 164-167. As the petitions show, the Commission was clearly wrong.

The BOCs and other ILECs through their monopoly control of bottleneck facilities, ubiquitous provision of local service in their franchise areas, presubscription databases, and access offerings have unparalleled knowledge of CPNI and other carrier information. CompTel at 11; LCI at 12. Although it is evident that the Commission recognizes that combined service CPNI is a powerful marketing asset which an ILEC could use anticompetitively (*CPNI Order*, paras. 182, 59, n.154, n.636), it bestows advantages on all ILECs with respect to the use of that information under a "total service" approach. Comcast at 23. As the Commission has explained, "to the extent that carriers offer both local and interLATA services as a bundled offering, a BOC that discriminates against the rivals of its affiliates could entrench its position in local markets by making these rivals' offerings less attractive." CompTel at 7 (citation omitted). Nonetheless, the "Commission's decision . . . enable[s] a BOC to